

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Steven Canonico,

Petitioner

v.

State of Nevada, et al.,

Respondents

Case No. 2:23-cv-01460-CDS-MDC

**Order Dismissing Petition and  
Closing Case**

[ECF No. 8]

In his 28 U.S.C. § 2254 habeas corpus petition, Steven Canonico challenges a judgment of conviction entered in the Eighth Judicial District Court (Clark County) of Nevada adjudicating him guilty, pursuant to a guilty plea agreement, of burglary. ECF No. 8 at 1–2. Because the Nevada appellate docket reflects that his appeal was dismissed as untimely,<sup>1</sup> and Canonico indicates in his federal petition that he has not filed a petition for post-conviction relief in the Eighth Judicial District Court, I directed him to show cause and file such proof as he had to demonstrate that the petition should not be dismissed as unexhausted and premature. ECF No. 14.

In Canonico’s response to the show-cause order, he states that he believes that he can proceed with his ineffective assistance of counsel claim in federal court because in Nevada ineffective assistance of counsel claims must be raised in a state post-conviction habeas corpus petition and not on direct appeal. *See Pellegrini v. State*, 34 P.3d 519, 534 (Nev. 2001). He is correct that he must bring the claim in a state habeas petition. But he hasn’t pursued a state post-conviction petition, so the claim remains unexhausted. As I explained in the show-cause order, I am not permitted to adjudicate a federal habeas petition containing unexhausted grounds for relief. *See Rose v. Lundy*, 455 U.S. 509, 510 (1982); *Rhines v. Weber*, 544 U.S. 269, 274–75 (2005).

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<sup>1</sup> Nevada Supreme Court Case No. 87438.

1 I must therefore dismiss this petition without prejudice as unexhausted. It appears that  
2 Canonico may still be able to timely file a state postconviction petition and present the ineffective  
3 assistance of counsel claim to the state courts. *See* ECF No. 14 at 3. He does not argue in his  
4 response to the show-cause order that he has valid reasons to be concerned about being able to file  
5 a timely federal petition if this case is dismissed without prejudice.

6 It is therefore ordered that the petition [ECF No. 8] is **dismissed** without prejudice as  
7 set forth in this order.

8 It is further ordered that a certificate of appealability is denied.

9 The Clerk of Court is kindly instructed to enter judgment accordingly and close this case.

10 Dated: June 4, 2024

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13 United States District Judge  
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